

**San Francisco Department of the Environment Regulation #SFE-22-##-##**  
**Regulations Implementing the**  
**Use of 100% Renewable Electricity Required for On-site Electricity Demands in Non-**  
**Residential Buildings of 50,000 Square Feet or More Ordinance**  
**(Ordinance No. 220-19)**  
**Draft Effective Date: July 1, 2022**

**A. Authorization**

The Use of 100% Renewable Energy Required for On-site Electricity Demands in Nonresidential Buildings of 50,000 Square Feet or More Ordinance, [Ordinance No. 220-19](#) (herein referred to as “the 100% Renewable Electricity for Commercial Buildings Ordinance” or “the Ordinance”), was signed by the Mayor October 4, 2019 and became effective on November 4, 2019. The ordinance created Chapter 30 of the Environment Code and requires all nonresidential buildings of 50,000 gross square feet or larger to ensure that all on-site electricity uses are supplied from 100% greenhouse gas (GHG)-free or renewable sources, as codified in the Municipal Code: Environment Code Chapter 30.

The Director of the Department of the Environment promulgates these regulations pursuant to their authority to adopt rules necessary to implement and administer Chapter 30 under Section 3004(a). Unless otherwise noted, section numbers refer to Environment Code, Chapter 30.

**B. Scope**

This regulation provides rules and procedures to carry out the provisions of Chapter 30. These regulations do not duplicate the Ordinance, and must be read together with [the Ordinance](#).

**C. Process**

The Director provided a 10-day public comment period and conducted a publicly noticed hearing open to all members of the public on July 11, 2022 seeking public input to this regulation. This regulation was approved by the Director on [DATE] and becomes effective July 1, 2022.

*[Charles to add detail if necessary.]*

#### **D. Definitions**

Terms used in this regulation that are defined in Section 3002 shall have the same meanings set forth in Section 3002.

“Annual Statement of Sources of Electricity” means a report provided on an annual basis to the Department of Environment documenting the Load Serving Entity(ies) serving all utility meters supplying electricity to a building; and the electrical generation service(s) all meters are subscribed to.

“Electrical generation service” means a service that is provided by a recognized Load Serving Entity that is subject to California Renewable Portfolio Standard disclosure requirements; OR a contract for retail electric service under California direct access regulations (e.g. an electric service provider as defined by California Public Utilities Code Article 16 Section 218.3 that is not an electrical corporation) where such contract is recognized by the Director as a GHG-free or renewable energy source as defined in Section 3002.

#### **E. Means of Obtaining GHG-Free or Renewable Energy**

1) Consistent with the State of California regulations referenced in the definition of GHG-free or renewable energy resources, electricity must be generated from sources that both minimize carbon emissions and contribute to the stability of the electric grid that serves California.

- a. GHG-free or renewable energy resources may be provided via:
  - i) Enrollment in a retail electric supply program such as service from a Community Choice Aggregation program or electric utility providing GHG-free or renewable energy;
  - ii) Electricity service contract providing GHG-free or renewable energy as allowed under California direct access regulations; or
  - iii) On-site generation of GHG-free or renewable energy.

**F. Qualifying Electricity Products**

- a. The Department of Environment shall publish a list of retail electricity providers that provide GHG-free or renewable electricity.
- b. Retail electricity suppliers such as a utility or community choice aggregation program may be recognized as providing GHG-free or renewable electricity for a given calendar year if the following conditions are met:
  - i. Annual [Power Source Disclosure](#) made available to the public by the California Energy Commission documents a retail product was sourced from GHG-Free or Renewable resources during the preceding calendar year; and
  - ii. The retail electricity supplier explicitly and publicly states an ongoing commitment to supplying electricity solely generated from qualifying sources, such as prominent information on the supplier's website.
- c. Electricity service contracts as allowed under California direct access regulations may be recognized as a qualifying GHG-free or renewable electricity product if:
  - i. The contracted generation resources consist of the combination of
    - 1. Generation in fulfillment of any applicable renewable portfolio standard requirements of the State of California; and
    - 2. Excluding electricity attributed to compliance with California renewable portfolio standard requirements:

- a. All contracted generation sources are designated Portfolio Content Category Classification 1 (PCC1) or 2 (PCC2) consistent with the [California Renewables Portfolio Standard Program Compliance Reporting Portfolio Content Category Classification Handbook](#), and
  - b. All such renewable energy credits are attributed delivered to the customer directly for retirement, or retired on their behalf to the customer, and
  - c. All such renewable electricity credits are retired in the same compliance year generated.
- d. Electricity service contracts as allowed under California direct access regulations ~~may~~ shall be recognized as a qualifying GHG-free or renewable electricity product if the retail electricity provider submits to Department of Environment on an annual basis:
- i. A Power Content Label report and Power Source Disclosure Annual Report utilizing templates published by the California Energy Commission and adhering to the California Energy Commission’s regulations governing the Power Source Disclosure Program. The completed Power Content Label and Power Source Disclosure Annual Report shall document the sources of generation supplied to a specific contract, set of contracts, or all customer contracts containing a specific repeatable provision; and
  - ii. ~~An annual affidavit from the retail electric service provider affirming the specific customer(s) receiving electric retail service consistent with the Power Content Label and Power Source Disclosure Annual Report. The retail electric service provider may document as necessary the customer’s consent for the retail electric service provider to affirm to the Department of Environment the enrollment in a contract supplying electricity from qualified sources. Annual evidence of the retirement in WREGIS or successor tracking systems of the renewable energy credits in section F above.~~

**Commented [A1]:** What is the meaning of attributed? In contracting, certain suppliers will sell PCC1/PCC2 but retire it on behalf of the customer. Other suppliers do actually transfer

**Commented [A2]:** This should say compliance year. You can't actually retire until Q2 of the following year

- e. To the extent allowed by law, the Department of Environment shall not disclose the Power Source Disclosure Annual Report for a retail electric provider, nor disclose the specific providers attributable to an individual building.
- f. To provide transparent information about impacts, the Department of Environment may publish a single combined Power Content Label report reflecting the generation types supplied by direct access providers in aggregate. The Department of Environment may also post or link to Power Content Labels posted by the California Energy Commission's Power Source Disclosure program.

**Commented [A3]:** Product Content Label here has a specific meaning for a specific product, and it would be inappropriate to produce an average. BOMA has no issue with reporting in aggregate.

**G. Procedure for Commercial Building Owners to Document Compliance with Renewable Electricity Requirements**

- a. On an annual basis, the Department of Environment shall collect from the building owner the following information:
  - i. Statement indicating each electric service accounts corresponding to each non-tenant utility electric meter was enrolled in a qualifying service providing GHG-free or renewable energy for the entire 12 months of the prior calendar year, and

**Commented [A4]:** BOMA fears that this section unfairly burdens the property owner. We are willing to meet with the Department of Environment and develop more feasible compliance measures.

~~ii. And either: either:~~

- 1. A statement affirming all tenants with separate utility electric service are enrolled in a qualifying service providing GHG-free or renewable energy,

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**Commented [A5]:** This is an impractical request. It would be hard to see any landlord opting to certify this.

~~2. ii. Or:~~

- a. A statement affirming all tenants with separate utility electric service have been notified of their responsibility to enroll in a GHG-free or renewable energy service,
- b. Number of electric utility meters serving the building,
- c. Number of utility electric meters where the tenant is directly responsible to the utility for payment of utility costs, and

**Commented [A6]:** Should this not belong under clause (a)(i), not (a)(ii). This does not appear to relate to tenant meters.

d. No later than the second year of reporting in compliance with these regulations:

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i. A list of tenants which have not demonstrated their separate utility electric service accounts have enrolled in a qualifying service,

Contact information including, to the extent readily available to the building owner, name, title, organization, email, mailing address and phone number for each tenant [] that has a separate utility electric meter unless such tenant has certified to the building owner in writing that such tenant has received a copy of this Ordinance from the building owner and has been informed of such tenant's obligation to enrol in a qualifying service.

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For purposes of this Paragraph, (i) a tenant that subleases spaces to a subtenant is deemed a building owner, and (ii) once a building owner has provided the foregoing certification, no further certification is required until and unless there is a change in tenancy of the subject space.

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ii. Contact information to the extent readily available to the building owner, including name, title, organization, email, mailing address and phone number for each tenant occupying more than 10,000 square feet that has not demonstrated their separate utility electric meter unless such tenant has demonstrated to the building owner that such tenant has service accounts have enrolled in a qualifying service, and

Commented [A7]: We have provided two alternatives, with this option 1 being preferred. We currently have a San Francisco ADA Ordinance that requires that Landlords provide written notice to tenant at the commencement of the lease of certain obligations. That is a model. BOMA think it is a better approach. Alternatively, please see option two of 10,000 Square threshold.

iii. A good faith approximation of the aggregate floor area leased to such non-excluded tenants.

Commented [A8]: This is an onerous annual requirement and requires annual monitoring by a Landlord. We have tried to limit the impact by identifying large utility users. A different metric that is based on utility consumption may also be relevant.

b. To the maximum extent possible Department of Environment shall minimize duplication of reporting. To do so, the methods and content utilized for Disclosure of Energy Performance Information as required by Environment Code Chapter 20 Sections 2002 and 2003 will be used to collect information necessary

Commented [A9]: This section obligates the landlord to provide lists of tenants that have not demonstrated compliance. This is a highly burdensome request, and especially for national tenants such as retail, unlikely to have any response. Tenant compliant issues cannot be the responsibility of the landlord.

Commented [A10]: Something appears missing here. If a tenant has separate meter and is separately required to enroll, should it not have the same obligations as to its meter as a building owner with respect to its space? Otherwise there is no tenant obligation under these guidelines.

to tracking compliance with the 100% Renewable Electricity for Commercial Buildings Ordinance.

- c. Each building owner shall comply with Environment Code Chapter 20, Section 2003, which -requires the owner of each nonresidential building to annually submit an Annual Energy Benchmark Summary to the Department of Environment.

- i. ~~An Annual Energy Benchmark Summary is generated and submitted through US Environmental Protection Agency's ENERGY STAR Portfolio Manager.~~

- ii. ~~An Annual Energy Benchmark Summary must be prepared and submitted through the use of a reporting hyperlink provided by the Department of Environment.~~

- iii. ~~An Annual Energy Benchmark Summary must characterize the entire building and related facilities, and must include at least 12 continuous months of energy usage data for the entire building for each fuel utilized~~

- d. For newly constructed buildings, a Statement of Sources of Energy is due when the first Annual Energy Benchmark Summary is submitted, and annually thereafter. Consistent with Environment Code Chapter 20 Section 2008(c)(1) owners of newly constructed buildings may defer submission of an initial Annual Energy Benchmark Summary not less than 24 months from the date that a Certificate of Occupancy is issued, or the next applicable annual deadline, whichever is greater.

- e. The Department may either

- i. Accept a single Annual Energy Benchmark Summary containing all information specified in Section G.(a.) above, or
  - ii. The Director may publish a brief form for the purpose of collecting any information noted in Section G.(a.) which the Director determines cannot be satisfactorily collected via ENERGY STAR Portfolio Manager.

**Commented [A11]:** The state law speaks for itself.

**Commented [A12]:** BOMA has concerns on timing for Direct Access customers. REC transactions will not be settled until April or May. We suggest the city either move its deadline to align with the state deadline or publish a separate form with later deadlines for Direct Access customers subject to the ordinance.

## H. Verification

- a. The Department of Environment may either:
  - i. On a sampling basis, ~~not to exceed 51%~~ five percent of buildings subject to the Ordinance per year, staff may review utility bills or equivalent documentation to confirm an Annual Statement of Sources of Electricity is complete and accurate for up to three years; or
  - ii. Accept third-party verification by a reputable licensed Professional Engineer, or other suitably qualified professional that an Annual Statement of Sources of Electricity is complete and accurate. Such verification shall include review of utility bills, contracts or equivalent documentation specifying the qualifying service GHG-free or renewable energy applicable to each electric meter for the entire 12 month reporting period. Third-party verification may be performed during an energy efficiency audit, retro commissioning study, or equivalent as recognized by the Director.

**Commented [A13]:** Who determines whether a building is subject to verification? How is this determined?

**Commented [A14]:** Recommend 3-year sunset clause, so that these records do not have to be maintained indefinitely. Language should be drafted to say 3 years or such later period as such records are generally maintained in the ordinary course. This is also how long PG&E

**Commented [A15]:** The addition of a professional engineer is burdensome request that comes with a real cost. Who is responsible for these expenses?

**Commented [A16]:** When is this required? Is it the intention for item (ii) here to be an alternative path to the staff review? If so, the language needs revision.

## I. Delegation of Reporting Duties to a Tenant

- a. If an Owner has leased a building and a principal ~~one or more~~ tenant(s) has ~~assumed management, regulatory compliance, and/or capital improvement costs of the~~ control of the utility bills for a majority of the building, the owner may ~~, with the consent of the tenant,~~ delegate all responsibility for reporting to that tenant. The owner shall report such delegation via an online form provided by the Department of Environment and such delegation shall include provision of contact information for ~~the principal~~ the ~~tenant(s).~~

**Commented [A17]:** This section is unworkable, given consent. Whichever entity has the purchase responsibility and control of the utility bill should be subject to the regulations.

**Commented [A18]:** What is a principal tenant?

## J. Implementation of Penalties

a. For the first two years that the Ordinance applies to a given building, the Director may elect to not implement penalties as described in Section 3005 of the Ordinance and Chapter 20, section 2009 ~~for failure of failure of tenants to comply building owners and tenants to comply,~~ provided such tenant leases in aggregate comprise no more than 15% of total floor area of the building.

**K. Waiting Lists and Extraordinary Costs.**

a. Any building shall be in compliance of this Ordinance if it:

- i. Shows enrollment in a waitlist as described in 3004(b)(2) of the Ordinance ~~shall only be sufficient for compliance and if both a only one program offering a Qualified Electricity Product qualified GHG-free or renewable program is running a waitlist, and no other qualified program is open for enrollment, whereby program's whose Qualified Electricity Product purchase requires customer investment or contract terms of more than 30 days shall not be considered open for enrollment, or~~
- ii. Demonstrates in a report by a qualified professional that the prospective costs of enrolling in a program with a Qualified Electricity Product of the building's current utility's default program offering exceeds 105% of the current costs.

**Commented [A19]:** BOMA rejects the notion that tenants can trigger penalties for the building owner. Any penalty due to tenant non-compliance should be levied directly to the tenant.

**Commented [A20]:** See comment above as to tenant compliance. There is no tenant compliance duty as BOMA reads this language.

**Commented [A21]:** SFPUC Hetch Hetchy Power should only be judged a qualified program if its available on a month to month basis with no customer capital required.

**Commented [A22]:** BOMA has serious concerns about the implications of available options to most building owners. Only 10% of buildings in CA are able to receive Direct Access, and PG&E's program waitlist won't open until 2026. With restrictions to SFPUC's Hetch Hetchy Power program, most SF customers will only be able to comply by Clean Power SF. Leaving PG&E comes with severe implications for building owners that expand beyond the scope of this ordinance.

**Commented [A23]:** The City should publish a list qualified programs. How else is a property owner to know?

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